

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

September 1, 2005

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 9:55 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Phil Blair, Sheridan Downey, Eugene Huguenin, and Ray Remy were present.

Item #1. Public Comment.

There was none.

Consent Items #2-7.

Commissioner Huguenin moved to approve the following items in unison:

Item #2. Approval of the July 14, 2005, Commission Meeting Minutes.

Item #3. In the Matter of Omar Bradley, FPPC No. 01/632 (9 counts).

Item #4. In the Matter of Paul V. Gallegos, Paul V. Gallegos for District Attorney, and Stephen P. Arnot, FPPC No. 03/107 (1 count).

Item #5. In the Matter of David Dhillon, David Dhillon Campaign, Dhillon for Supervisor, and Dhillon for Assembly, FPPC No. 00/658 (1 count).

Item #6. Failure to Timely File Major Donor Campaign Statements.

- a. **In the Matter of Dave Brooks, FPPC No. 05-0308 (1 count).**
- b. **In the Matter of Arrowhead Credit Union, FPPC No. 05-0320 (6 counts).**
- c. **In the Matter of Reed Smith, FPPC No. 05-0394 (1 count).**

Item #7. Failure to Timely File Late Contribution Reports – Proactive Program.

- a. **In the matter of California Dental Association Issues Fund, FPPC No. 04-0736 (1 count).**
- b. **In the Matter of Elliott Broidy and Affiliated Entities, FPPC No. 05-0378 (1 count).**

c. In the Matter of Los Angeles County Firefighters Local 1014 Legislative Fund Committee, FPPC No. 05-0384 (2 counts).

Commissioner Blair seconded the motion. Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

ACTION ITEMS

Item #8. Adoption of Proposed Amendments to Regulation 18351 – Conflict of Interest Code of the Fair Political Practices Commission.

Carla Wardlow, Technical Assistance Division Chief, requested approval of the Commission's conflict of interest codes. She added that the Political Reform Act (Act) requires that the Commission adopt such a code. Amendments to the code include the addition of the Assistant Enforcement Division Chief and the renaming of the Media Director position to Information Officer II.

Commissioner Downey moved to adopt the proposed amendments to regulation 18351.

Commissioner Huguenin seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #9. Adoption of Proposed Regulation 18735.5: Filing Dates for Assuming Office, Annual, or Leaving Office Statements for Multi-Agency Filers of Joint Powers Insurance Agencies.

John Wallace, Assistant General Counsel, advised that this item seeks to clarify the responsibilities of individuals who have reporting obligations with more than one joint powers insurance agency under section 87350 and 87500. This is a non-controversial item which was noticed to the public; no comment letters have been received. As a matter of background, there are two types of disclosure requirements of "public officials" under the Act. There are statutory filers who must disclose all of their economic interests each year. Then there are code filers who are required to disclose specified information at the discretion their agency. In 1990, a new type of statutory filer was added to the Act. The new provisions required individuals who were designated in two or more joint powers insurance agency conflict of interest codes to file directly with the Commission instead of filing duplicate Statements of Economic Interests (SEI's) with each agency. These individuals are called multi-agency filers. This regulation is an effort to codify the rule and the oral advice provided by the Commission since 1990 in complying with section 87350.

Mr. Wallace explained that subdivision (a) of the proposed regulation restates the statutory rule in section 87350. Subdivision (b) clarifies the filing requirements applicable to the three types of

multi-agency SEI's – assuming office, annual statements, and leaving office. The time periods are consistent with those applied to other filers, except that the triggering date is not when the filer leaves or assumes a single office, but when they leave or assume a second joint powers agency office. There is also language under subdivision (b) which attempts to blend the filing of reports in cases when filers leave early or late in the year with those of the annual SEI, consistent with that required of other filers. The only new requirement that does not come out of past advice is subdivision (c). In the past, multi-agency filers have either reported their private sector employer on the SEI or listed all of the joint powers agencies for which they worked. This language would establish a consistent rule, requiring the filer to list all the employing joint powers agencies on the SEI. Subdivision (d) clarifies that the requirements of the regulation are in addition to any other requirements imposed on designated employees with statewide jurisdiction under the Act. Mr. Wallace added that no comment letters had been received on the item.

Commissioner Downey asked about the filing status of an individual who is on two joint powers agencies and is taken off one but remains on another.

Mr. Wallace said they would still need to file under the code of the joint powers agency for which the employee continued working.

Commissioner Downey clarified that the person would continue to file with the new agency while filing a leaving office statement with the old agency.

Mr. Wallace said yes, that was correct.

Commissioner Downey mentioned that on page 1 of the regulation, line 16, the disclosure requirements include “all income received,” but the next page, line 22-23 includes a parenthetical clarification in addition to the word “income.” He wondered why the same phrase was not used on page 2.

Mr. Wallace agreed that it should probably have the same language in both sections.

Commissioner Downey asked whether that means the parenthetical phrase will be added to the sentence on the first page.

Mr. Wallace said yes.

Commissioner Huguenin asked if it is correct that this implements a change for multi-agency filers.

Mr. Wallace responded that the person working for the agency is typically working through a firm, such as Keenan and Associates. Under the proposed regulation, the Commission would require reporting for only the joint powers agency that the person works for.

Commissioner Remy commented that the joint powers agency here is an insurance agency and wondered whether the Commission treats other joint powers agencies differently.

Mr. Wallace advised that other joint powers agency filers have to report the same things, but they have less of a burden than individuals who are required to file under the statute. He said that this statute deals only with insurance joint powers agencies. In response to Commissioner Huguenin's earlier question, Mr. Wallace added that the private sector employer would still be reported as a source of income.

Commissioner Downey moved to approve proposed regulation 18735.5 with his suggested changes.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #10. Adoption of Proposed Regulation 18732.5 – Statements of Economic Interests From Filers of Abolished Agencies.

Commission Counsel Andreas Rockas explained that in recent years, the Technical Assistance Division received inquiries about state agencies slated for abolishment. The problem is that when an abolished agency is nearing its last days, many employees are concerned with finding a new job or dealing with other issues and may not file their Statements of Economic Interests (SEI's) or have them properly reviewed. The proposed regulation authorizes the Commission to aid or take over the filing process for the agency's filing officers. At the last Commission meeting, this item was discussed under pre-notice. Staff now presents an amended version of the proposed regulation to address concerns which were previously discussed.

Mr. Rockas advised that the title of the regulation now reads, "Statements of Economic Interests From Filers of Abolished Agencies." He said the addition of the words "From Filers" more accurately describes the purpose of the regulation. Subdivision (a) states that this regulation deals only with SEI's of abolished or soon to be abolished agencies per legislative or executive order. The six-month timeline was removed and placed in subdivision (c), which applies only to abolished agencies for which the Commission is the code reviewing body. Subdivision (b) is designed to aid the reading of the regulation and has been made more concise. Subdivision (c) applies only to agencies for which the Commission is the code reviewing body. It also creates two time periods which have been amended to be more grammatically parallel. The regulation also now includes a provision specifying that an abolishing agency's authority to forward SEI's, to either a successor agency or the Commission, is limited to six months.

Commissioner Huguenin said Mr. Rockas provided a good summary of the regulation.

Chairman Randolph wondered if the language on line 13 of page 1 should read, "may be forwarded to the successor agency."

General Counsel Luisa Menchaca clarified that staff should add the word “may” [be forwarded] to the language.

Commissioner Remy moved to approve proposed regulation 18732.5 with the noted change.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #11. Adoption of Proposed Regulations 18722 and 18117: Statement of Economic Interests Filing Obligations.

Senior Commission Counsel Steven Russo explained that these regulations intend to provide greater clarity regarding filing obligations that arise under the Political Reform Act (Act).

First, Mr. Russo discussed the question of what constitutes “assuming office” for those officials whose duty to file a Statement of Economic Interest (SEI) is triggered upon “assuming office.” At pre-notice, the Commission expressed concern about whether this rule was enough of a bright line rule. In response, Mr. Russo presented two options. The first option (Option 1) is to go with the first part of the definition and make it a bright line rule. The second option (Option 2) is to go with an expanded definition with a different rule for elected officials. Staff recommends option two because it is more expansive than the first option and because it focuses on the point at which the official assumes office rather than a ceremonial event. Mr. Russo added that the Commission received a letter from the Public Utilities Commission (PUC), which proposed two factual situations and some alternative language. Staff does not recommend using the PUC’s alternative language because it does not provide greater clarity than the language proposed by staff. He said that the language proposed by staff already addresses both of the two factual situations proposed in the PUC letter, and that the concerns are addressed by both options.

Commissioner Downey asked about the example from the PUC letter where it was unclear whether a person is on the payroll when training occurs.

Mr. Russo replied that he agrees that there is some ambiguity in that scenario. He added that the question is whether the person is performing the duties or is authorized to perform the duties. If training is offsite, for example, then there is no performance or authority to perform duties. However, if a person appears at the office, then the person would be considered to have assumed office and is authorized to perform the duties that come with the position.

Commissioner Downey asked what the assuming office date would be for an employee who is hired in November, to begin working on January 1, but who attends training in December. He wondered whether the proposed language picks up this scenario.

Mr. Russo responded that the assuming office date would be January 1, because the person is not rendering advice or performing duties. He added that he believes the proposed language picks

up that scenario but that Commissioner Downey points out the difficulty in drafting such a regulation because there is no clear cut way to define “assuming office” so that it is clear. Under the proposed regulation, if a person is authorized to perform the duties or is actually performing the duties, then they have “assumed office.”

Chairman Randolph wondered whether a regulation should be passed at all since it seems that the need to issue advice letters would continue regardless. She agreed that option 2 is just as clear as the PUC’s proposed language.

Mr. Russo went on to discuss the second question of what constitutes being “appointed or nominated” for those officials whose duty to file an SEI is triggered by being “appointed or nominated” to an office. He said that staff recommends adoption of the definitions for appointment and nomination as they are defined in the Government Code outside of the Act. An “appointment” would occur when a person accepts an appointment, and “nomination” would occur when a nomination is submitted to a confirming authority. The PUC, in its letter, said it would prefer the definition of “appointment” to consist of the submission of the appointment papers. Staff recommends that this suggestion not be taken because not all appointments include the submission of papers.

Commissioner Downey commented that the letter mentioned that there is not always a clear “acceptance.”

Mr. Russo added that the duty to file an SEI is with the individual, who best knows when he or she accepted the appointment. The point made by the PUC is that if a filing officer in an agency wants to know when the acceptance occurred, they could look at the appointment papers. The tilt is then toward the knowledge that the agency has, not the individual. Staff recommends adopting a definition that is consistent with other areas of the law.

In response to a question, Mr. Russo replied that this issue deals with only a small group of individuals including only those subject to confirmation by the Senate or Judicial Appointments Council.

Commissioner Downey said that the PUC suggested that the appointee knows his or her appointment date, but questioned how others would know.

Mr. Russo said that the issue for filing an SEI is because the person is participating in governmental decisions. If the person shows up for work, then that is the point at which it matters whether the person is filing an SEI. It is not an issue until the person begins working.

Commissioner Blair wondered about the difference between the terms “started working” and “authorized” to work.

Mr. Russo replied that there may exist a transitional period where an individual has been given a start date of January 1, but he or she becomes involved by participating in the process of whatever it is they will be doing. These typically are not low-level employees, but managers or supervisors, for example.

Commissioner Blair opined that they include people who are placed in a position to make or participate in making decisions. The effect is that others may think they are in a decision-making position.

Mr. Russo said that was right. If the person is doing the job, then there is no concern about the paperwork.

Commissioner Blair said that the concern is that if the person showed up to observe a decision-making process, they may not really have participated in the decision. He wondered whether there is a grey area in this situation.

Mr. Russo explained that for some officials, the authorizing event is not very clear; there are no papers. The person may show up for work and perhaps fill out some forms later that day, but there is no formal process.

Commissioner Blair asked about the payroll date as the start date.

Mr. Russo said that the payroll date and the start date may or may not be the same. He added that the de facto test is whether the person is doing the job.

General Counsel Luisa Menchaca added that the language in subdivision (b) says “perform the duties.”

Commissioner Blair opined that someone would not be hired unless they are on the payroll and wondered if he was missing something.

Mr. Russo explained that it is not unusual to appoint a person to a position before they begin, and that person may show up at the office to get acquainted with the work. At that point, the person is beginning to participate in the process. Most people, however, will not show up at work until they are on the payroll.

Commissioner Downey said he is persuaded to accept staff’s recommendations on the regulation. He asked what is wrong with the date that the appointment papers are signed.

Mr. Russo replied that some appointees are not subject to having papers signed. One could be appointed to a Committee or Commission, where there are no papers filed. Some appointments are pretty informal.

Commissioner Remy asked how staff would handle an inquiry from a city council who selects a city manager in November, for example. Under the hypothetical, the person is leaving his city manager position in another city, but publicly announced his newly appointed position in the new city before he leaves his prior position. He wondered when the person should file.

Mr. Russo responded that it is a factual question of whether the person is still participating in decision-making in his prior position, and then it would be a separate factual question of whether

the person has started participating in decision-making in his new position. There may be an overlapping obligation, depending on the facts in such a situation.

Commissioner Remy commented that option 1 is not a good option but that option 2 is not much better. He is not sure that the proposed language is clarified enough. He wondered whether this issue should be addressed through advice letters rather than through a regulation.

Commissioner Downey said he agreed with Commissioner Remy.

Carla Wardlow, Technical Assistance Division Chief, advised that as filing officer for approximately 20,000 statements, Commission staff think that this regulation will allow more clarification for issuing advice to people regarding when to file their SEI's. She said that she prefers the regulation over written advice and that she prefers option 2 because there will not be many cases where this is unclear.

Mr. Russo moved on to the issue of when a person is considered to have "left office." Staff proposes that the Commission adopt a definition of "leaving office" to mean the date that a person is no longer authorized to perform the duties of the office or the date that a person has stopped performing the duties of the office. He added that the Commission may wish to address the issue of officials who go on leaves of absence or who work intermittently. This issue is addressed by proposed subdivision language that a person will not be deemed to have left office simply because that person is on a leave of absence or serves as an intermittent employee. Staff supports adopting the proposed definition with the additional language regarding leaves of absences and intermittent employees. Mr. Russo mentioned that the PUC letter said that staff's definition was not clear enough in the case where an individual stops performing the duties of the office but remains on the payroll. He said that staff disagrees with that assessment, and the PUC letter did not offer any suggested language on this issue.

Chairman Randolph wondered if the most common scenario is that a person leaves office and is simply burning up accumulated vacation time. She suggested adding a sentence to subdivision (b) such as, "an individual that is no longer performing the duties of the office but remains on the payroll would be considered to have left office" or something along those lines. It is probably the most common example. She added that she agreed with the PUC that the proposed language does not clarify the issue.

Commissioner Blair asked whether it would be effective at the start of the vacation time or at the end.

Chairman Randolph replied that it would be effective when the person begins burning the time.

Commissioner Downey said he agrees with Chairman Randolph. He then asked about another issue raised in the PUC letter regarding retired annuitants.

Mr. Russo explained that the Commission staff recently issued an advice letter on the issue, saying that the Commission considers the position in which the person is serving. If the person is filling a designated position and is a retired annuitant, then the person must file an assuming

office and leaving office statement. If a person is already in that position and then becomes a retired annuitant still serving in the same position, then they are still performing the duties of the position and no leaving office statement is needed. He clarified that a retired annuitant is a person who is retired but continues to work on an hourly basis with no benefits. They are still doing the same job.

Chairman Randolph said that may not always be true. A retired annuitant may come back in a different capacity, where they leave one office and then assume another office.

Commissioner Downey opined that our language seems to pick that up.

Mr. Russo said that is correct. He moved on to the fourth issue regarding the filing obligations of a person serving as an alternate or designee on a council, board, or commission. He explained that the proposed regulation requires the same filing obligations from alternates or designees as it does for other members on the council, board, or commission. He added that on the fifth issue, the proposed regulation provides that, if a filing officer fails to comply with a duty or provide notice, then that failure will not affect the duties of a filer. Staff recommends adoption of both of these last two provisions.

Ms. Menchaca suggested inserting language to say that “for purposes of this subdivision, a person shall be deemed to have left office if the person merely receives compensation for accumulated leave.”

Chairman Randolph suggested to add “and is no longer performing the duties of the position.”

Ms. Menchaca disagreed with the addition because it is assumed by the word “merely.”

Scott Hallabrin, from the Assembly Ethics Committee, commented that the Assembly system is not set up to catch those who leave office and are still burning vacation time. He added that for a large organization with lots of employees, this may be difficult to know and have a trigger. As a result, it might trigger inadvertent violations.

Chairman Randolph said that she understood that this regulation is needed because people may move away, so it is easier to get them on their way out the door, before they leave town.

Mr. Russo added that the individuals who leave may acquire economic interests after retiring, and may not want to disclose those newly acquired interests.

Commissioner Blair stated that they are still legally employed by the state. If the employee is on vacation, they may still be asked to come back to the office. He said it seems strange to file a form and then be required to file another one when they return to the office to do something.

Mr. Russo replied that this is what makes it difficult, because it always depends on the facts. One person may skip town, and another may be around and is willing to come back and help. Staff would say that the latter is still performing the duties of the office. The question is based on the facts and whether the person is still performing the duties of the office.

Commissioner Blair asked whether, if he filed his statement upon leaving office and was later asked to return to the position temporarily to complete some work, he would be allowed to return and do such work.

Mr. Russo said no, but an arrangement can be made for such a person to return to the office.

Ms. Wardlow explained that a person could amend their leaving office statement for that period, but they will still be subject to disqualification from decisions. A person could otherwise file a leaving office statement and then an assuming office statement, but she would recommend that they file an amended statement.

Mr. Hallabrin advised that subdivision (b) now reads that a person must file if they are no longer authorized to perform and has stopped performing the duties. If a person retired, then they have left the office. If a person is on vacation, then they are technically still authorized to make the decision. From a practical standpoint, the Assembly and probably other organizations are not set up to catch that situation. The system only catches those who come off the payroll.

In response to a question, Mr. Russo said that under the “stops performing” clause, a problem may arise when a person does not show up for work for a day or two due to personal problems and then a personnel action is taken. During all of this, it may not be clear when the duty begins. The person may be later terminated. The question is at what point the person should file their statement. In this scenario, the person has never left office, but they have been terminated and must therefore file a leaving office statement. It is not just that one did not show up, rather, it is the point at which a person stopped working; in addition, there was an action by the employer which makes the person no longer authorized to make such a decision.

Commissioner Downey asked whether the person is still authorized to make a decision even though they are burning their vacation pay.

Mr. Russo replied that he did not think the person would be authorized because the person’s position may have been filled even though the person is still on the payroll.

Commissioner Blair announced that he will support a requirement that SEI’s should be filed on the date their employment ends.

Commissioner Remy inquired whether a high-level employee, if they came back as a retired annuitant, would be required to file leaving office statements.

Mr. Russo replied that if the person is filling a different position, then there might be a demotion.

Ms. Wardlow clarified that it depends on whether the new position requires filing and has a different disclosure category. If so, then the person would file a leaving office statement and an assuming office statement.

Chairman Randolph summarized that under decision point 1, the consensus was that option 2 was fine. Regarding the appointment issue, she said she supports the “accepted an offer of appointment” provision so that the clock starts to run on the date of appointment.

Mr. Russo added that the point of the regulation is to deal with those who are appointed or nominated and under Senate or Judicial approval. It could be clarified to say that the definition only applies to these individuals.

Ms. Menchaca added that under Government Code section 87202, subdivision (a)(2) and (a)(3) would apply to those who are subject to Senate or Judicial confirmation, requiring filing within 10 days. For all others, such as section 87200 filers, the appointment would be an issue but would kick back to subdivision (a) to apply as of the date when the person assumed office.

Chairman Randolph said she did not think it was clear. She added that the statute compresses them into one, so why not repeat it. If the person is subject to confirmation, then the date should be when the person is nominated or appointed. If the person is not subject to confirmation, then the date kicks back to the date of assuming office, when the person was sworn in.

Mr. Russo mentioned that the date is 10 days from the date of nomination, so that the economic interests are disclosed before the nomination process.

Chairman Randolph said she supports decision point 2, to include “and stops performing the duties.”

Commissioners Downey and Huguenin added that they were comfortable with that.

Chairman Randolph asked about the language suggested by Ms. Menchaca to say that if a person is merely burning vacation time, then the person should file when they leave the office.

Commissioner Blair said he did not support the suggestion on this particular issue of burning vacation time.

Chairman Randolph commented that she is comfortable with the earlier date because it is easier to catch people.

Commissioner Downey said that he is not comfortable because of Mr. Hallabrin’s comments, but that he would support the recommendation of the Chairman and staff.

In response to a question, Mr. Russo explained that Commission advice letters say that when a person must file a leaving office statement when they stop working, even though they are continuing on the payroll.

Chairman Randolph said that she is comfortable with the language, since it is a codification of current advice. She asked that staff add “for the purposes of this subdivision” on line 23 to make it more clear.

Commissioner Huguenin moved to approve regulation 18722 with the suggested changes.

Commissioner Downey seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Commissioner Downey moved to approve regulation 18117.

Commissioner Huguenin seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #12. Adoption of Proposed Amendments to the Post-Employment “Permanent Ban” under Regulation 18741.1 – Definition of Supervisory Authority.

Commission Counsel Bill Lenkeit explained that the proposed amendments seek to codify language in the Commission’s opinion, *In re Lucas*, regarding what constitutes “supervisory authority.” This issue arises under sections 87401 and 87402, which prohibits former state officials, who participated in a proceeding while employed by a state agency, from being paid to represent or assist in representing another person regarding that same proceeding. Subdivision (a)(4) deals with what constitutes “participation.” The current regulation states that any supervisor is deemed to have participated in a proceeding which was pending before the official’s agency and which was under his or her supervisory authority. The proposed amendments seek to clarify “supervisory authority.” He advised that at the last meeting, there was some concern about whether to define “supervisory authority” to include a person who is a “direct supervisor” versus a person who is an “immediate supervisor.” In response to this concern, staff proposes language clarifying “supervisory authority” to include any person whose duties include primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated or conducted, as well as any person who has direct supervision of the person performing the investigation, review, or other action involved in the proceeding. It also says that “supervisory authority” does not extend to a supervisor at a higher level within the agency unless the higher supervisor has actual involvement in the proceeding. In *Brown*, for example, this language would include the enforcement division chief, but not the executive director unless they had actual involvement.

Chairman Randolph commented that Mr. Lenkeit addressed the concerns from the last meeting very well.

Commissioner Blair moved to adopt regulation 18741.1.

Commissioner Downey seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #13. Adoption of Proposed Amendments to Regulation 18450.4. Conforming Advertisement Disclosure Regulations with Commission Policy.

Chairman Randolph noted that this issue had appeared before the Commission twice previously and asked Commissioners if they needed a staff report.

(No one said they needed one.)

Commissioner Blair moved to approve regulation 18450.4.

Commissioner Huguenin seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #14. Annual Technical Clean-up Packet.

Legal Assistant Joan Giannetta advised that each July, Commission staff proposes new technical amendments to regulations of the Act to eliminate outdated references or make conforming changes. Staff recommends adoption of the proposed amendments.

Commissioner Downey moved to approve the amendments included in this item.

Commissioner Remy seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #15. Regulatory Calendar – Work Plan Revisions.

Assistant General Counsel John Wallace added that next month, staff will have the 2006 regulatory calendar proposals, and public comment letters will be considered.

Chairman Randolph added that the next meeting is scheduled for October 12 at 10:00 a.m.

Item #16. Resolution of the Commission Regarding Enforcement of the Political Reform Act.

Chairman Randolph explained that this resolution is not about not enforcing the major donor provision, and it is not about prohibiting private actions. It is about the filing of several hundred complaints at one time and making it impossible for the Commission to proceed. Given that the Act has a provision that cases are filed with the Commission first, it follows that cases should be filed in a manner that it can handle.

Senior Commission Counsel Lawrence Woodlock gave an update of the Norm Ryan litigation. He advised that after the last Commission meeting, staff sent a letter to the court regarding the streamlined program. On July 28, the court held a case management hearing, where the judge asked what happened at the Commission meeting, and both parties gave the court an account of the meeting. The judge discussed with the parties the public interest served and the propriety of filing a single action against hundreds of respondents when there was no factual nexus. Mr. Woodlock said that the judge wondered if that was an appropriate forum for the litigation and that he seemed unhappy with the size of the case. Mr. Woodlock stated that the judge said it was a morass and that the judge raised the idea of transferring the case to the complex litigation department even though this is a different type of case than those handled by the complex litigation department. The judge said he decided to retain the case and scheduled the next hearing for September 7. Mr. Woodlock explained that later, the judge sent an order transferring the case to the complex litigation department, which has set an initial status conference for October 3.

Chairman Randolph commented that she attempted to modify the resolution to address the concerns expressed by the commissioners. She included more information about staffing resources and the typical enforcement process. The resolution stops short of calling on the plaintiff to dismiss the cases. The focus is on the core issue which is that the filing of hundreds of cases at one time is not conducive to allowing the Commission to pursue the claims.

Stephen Kaufman, from Kaufman Downing, LLP., urged adoption of the resolution. He stated that the fundamental issue is less about public policy matters and more about the financial recovery of the plaintiff. He added that it is incumbent upon the Commission to assert its position and authority in this area. Under the circumstances, the matter is becoming more expensive for the defendants. The court ordered parties to pay an additional \$550 fee for complex litigation costs, in addition to other costs and attorney's fees. Court costs alone are more than double what this Commission would normally charge a defendant under the streamlined program. He pointed out that this shows the absurdity of the situation. He advised that people would like to resolve the matter with the Commission, but they still face potential judgments in court. The plaintiff seems intent on demanding settlements well in excess of those that would be sought by the Commission. He urged the Commission to adopt the resolution and encouraged the Commission to continue to advise the court. He added that the court will need to be educated about the purpose and type of cases in the streamlined program, the typical fine amounts, and the fact that 50% of recovery is supposed to be paid to the state. He said that all of this should be communicated to the court.

Commissioner Downey asked how many respondents have appeared and paid fees.

Mr. Kaufman replied that respondents are at any level of appearance. Some have made appearances and some have filed letters. Because the opinion is stayed, pending review by the complex litigation court, there may be many parties who have not yet made any formal appearance in the case but have paid fees.

Commissioner Downey asked how many parties are before the court.

Mr. Kaufman responded that about 200 or more are still on.

Commissioner Blair asked about the plaintiff.

Mr. Kaufman explained that the plaintiff accompanied service of the complaint with a demand for 90% of the value that was not reported, which is the value of the claim. He added that some parties have settled at closer to the 90% amount.

Chairman Randolph mentioned that those settlements involve a payment to the plaintiff only, not the state.

Mr. Kaufman added that that is correct. He said that the plaintiff has stated that a settlement is not subject to the rule that requires that half of the recovered amount go to the state. As a result, plaintiff has been keeping all of the money from each settlement.

Chairman Randolph said she supports the resolution.

Commissioner Remy asked about the steps taken upon adopting the resolution.

Chairman Randolph replied that in addition to notifying the court, the substantive issue of appropriate legislative steps will be included in the Commission's legislative proposals for next year, which will be discussed at the November meeting. Also, in October, with further discussion of the strategic plan, the Commission will discuss the issue of resources. Ultimately, if the Commission had the resources to handle such complaints, it would.

Commissioner Remy asked if there would be any utility in letting key members of the legislature know about the issue.

Executive Director Mark Krausse replied that Scott Hallabrin is their eyes and ears.

Chairman Randolph said that stating the Commission's position as to whether these types of cases really do serve the public interest of the Act is the most important thing the Commission can do in this situation. A legislative solution would ensure that the number of cases or timeframe allowed in the statute is appropriate.

Commissioner Blair added that this is an absolute abuse of the system and that it is very unfair to those defendants.

Commissioner Downey moved to approve the resolution.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Commissioner Huguenin wondered who in state government might have standing to challenge the plaintiff taking the entire amount of settlement money.

Mr. Woodlock replied that he was not sure but that he thought it would be the Attorney General. The question would be who the Attorney General would be representing in such an action.

Enforcement Division Chief John Appelbaum added that it probably would be the Attorney General representing the Commission in order to get money for the General Fund.

Chairman Randolph mentioned that the state as a whole would have an interest.

Mr. Woodlock advised that there is a standing issue here, and it would probably be an agency with an interest in the money. The Attorney General would represent that agency.

DISCUSSION ITEMS

Item #17. Legislative Report.

Executive Director Mark Krausse added that three bills, AB 534, AB 1363, and SB 472, have been amended to deal with disclosure thresholds to allow better transparency of the income going to public officials. AB 1363 requires blind trusts for all officials. AB 1391 also seeks to change disclosure categories. He advised that the first three bills will certainly not pass this year.

Item #18. Executive Director's Report.

Mr. Krausse announced the retirements of Bill Marland, who did auditing work and handled complex laundering cases, and Deanne Canar, who also worked on complex cases and who has worked for the Commission for 16 years. In addition, Mr. Krausse welcomed two new investigators, Elaine Olmos-Florez and Rudy Garza, both of whom bring extensive experience to the Commission.

Item #19. Litigation Report.

General Counsel Luisa Menchaca advised that the briefing in the Citizens case begins on September 29.

Chairman Randolph announced that closed session is canceled.

The meeting adjourned at 11:59 a.m.

Dated: September 7, 2005

Respectfully submitted,

Whitney Barazoto
Commission Assistant

Approved by:

Liane Randolph
Chairman